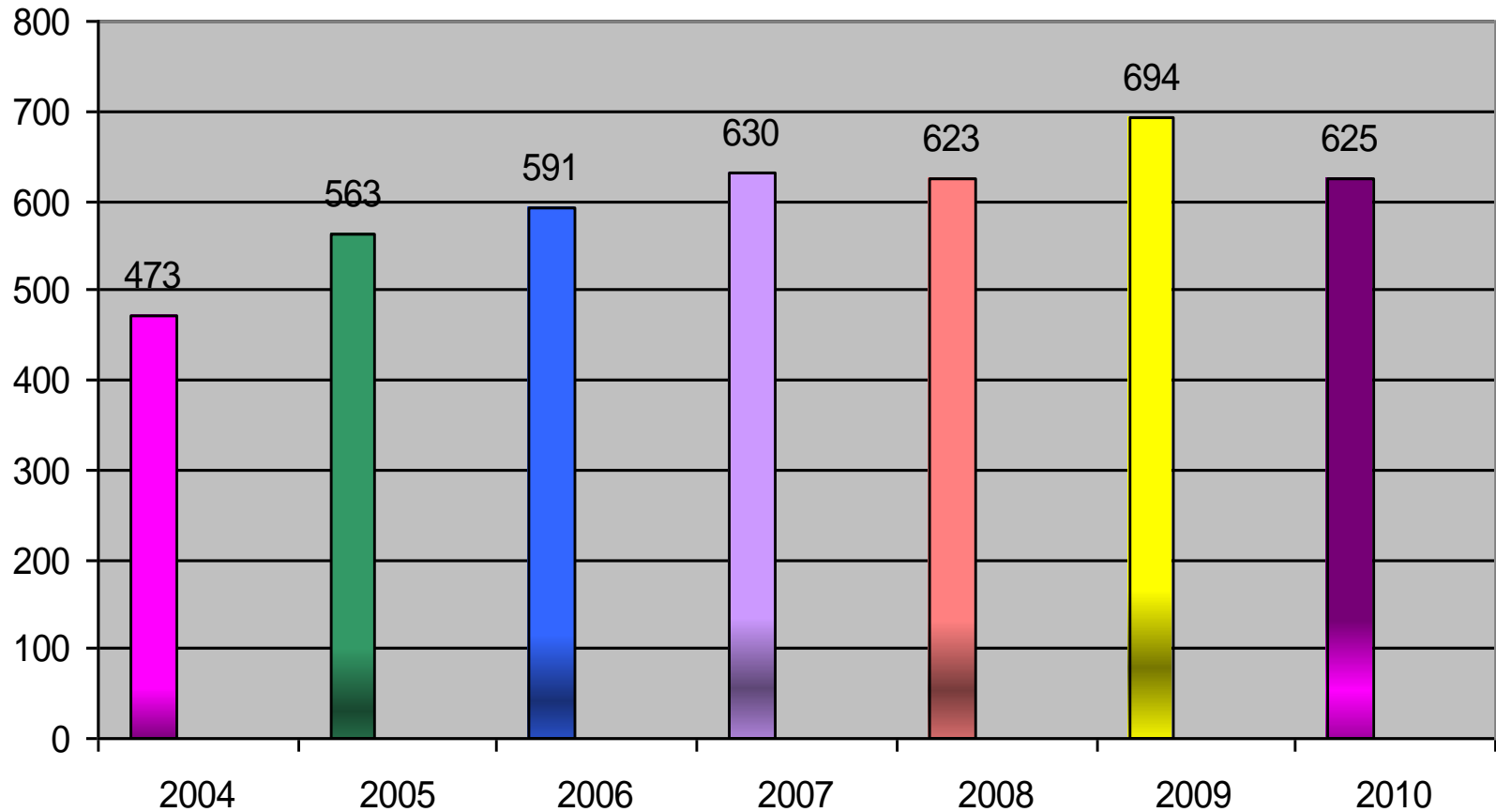
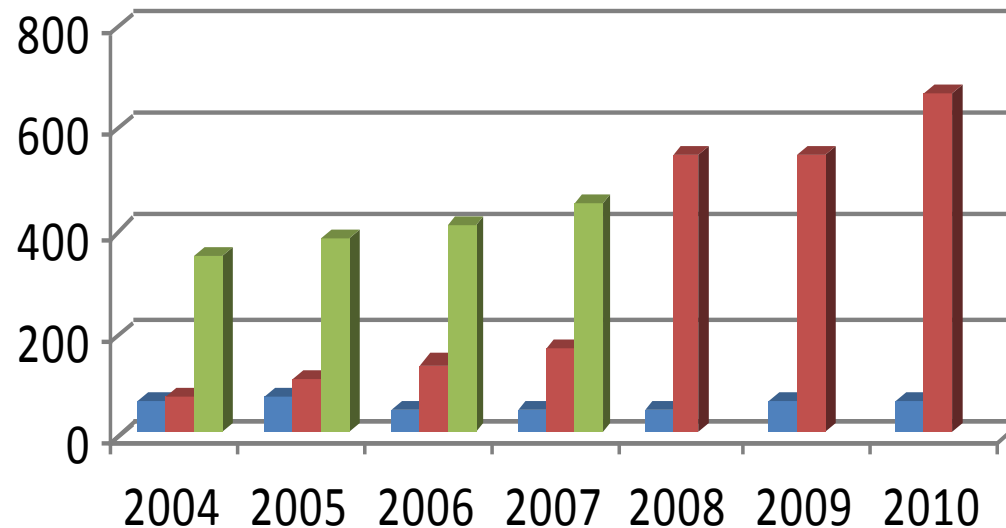


TOTAL NUMBER OF LICENSED COLLECTION AGENCIES

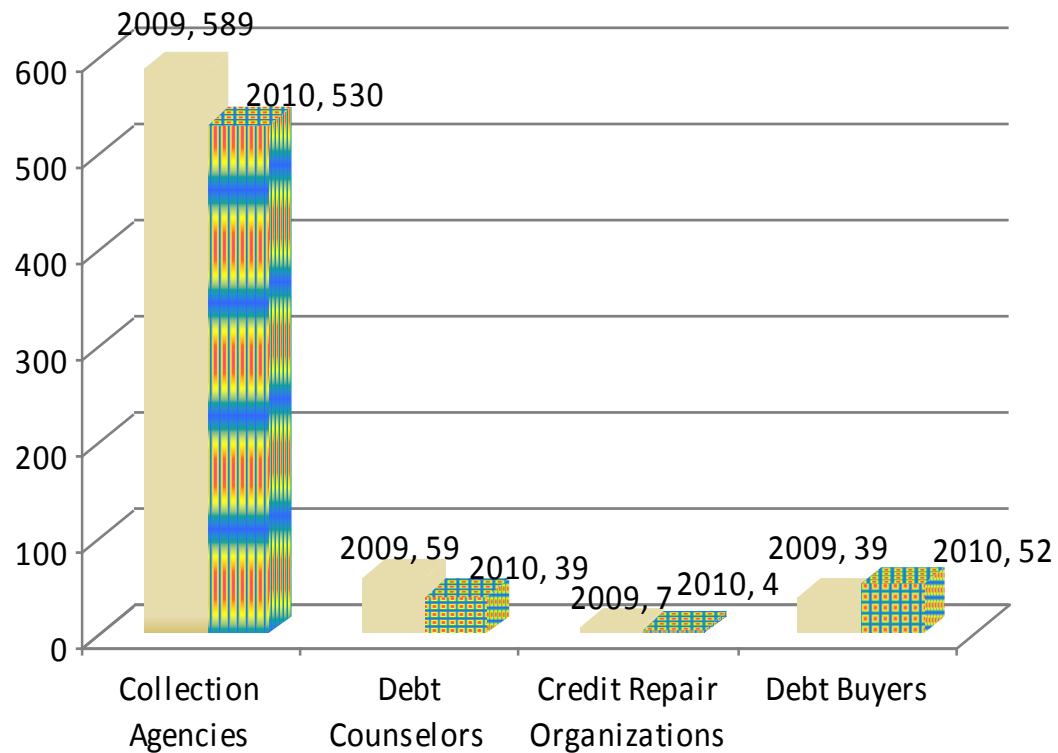


Agencies by Location

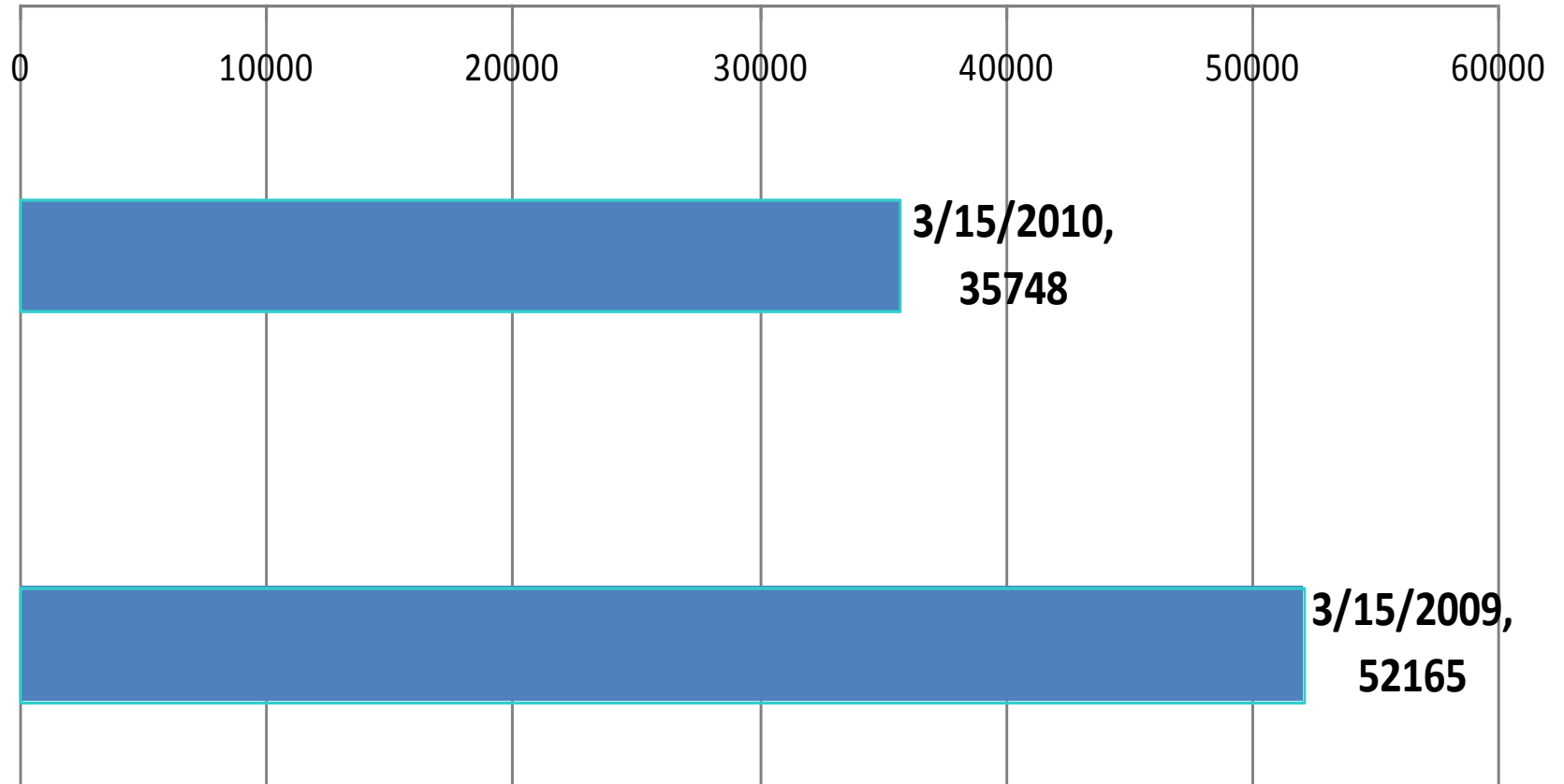


■ In-State CA ■ Out-of-State CA ■ Foreign Permittees

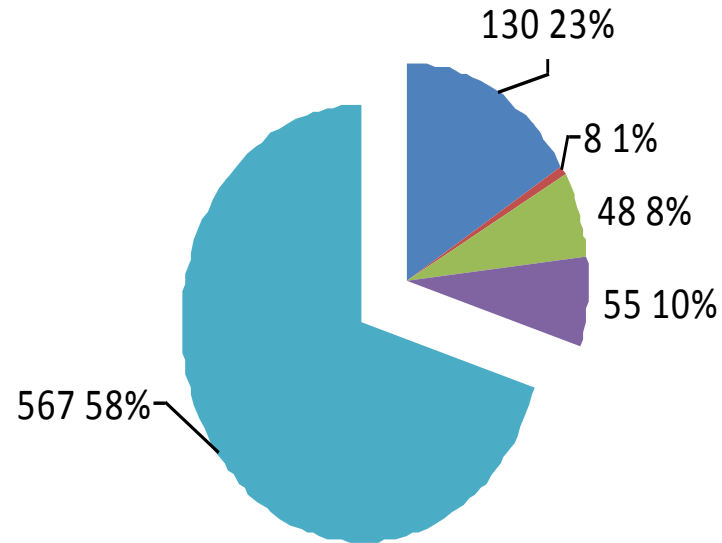
2009-2010 COLLECTION LICENSEE BREAKDOWN



AGENTS

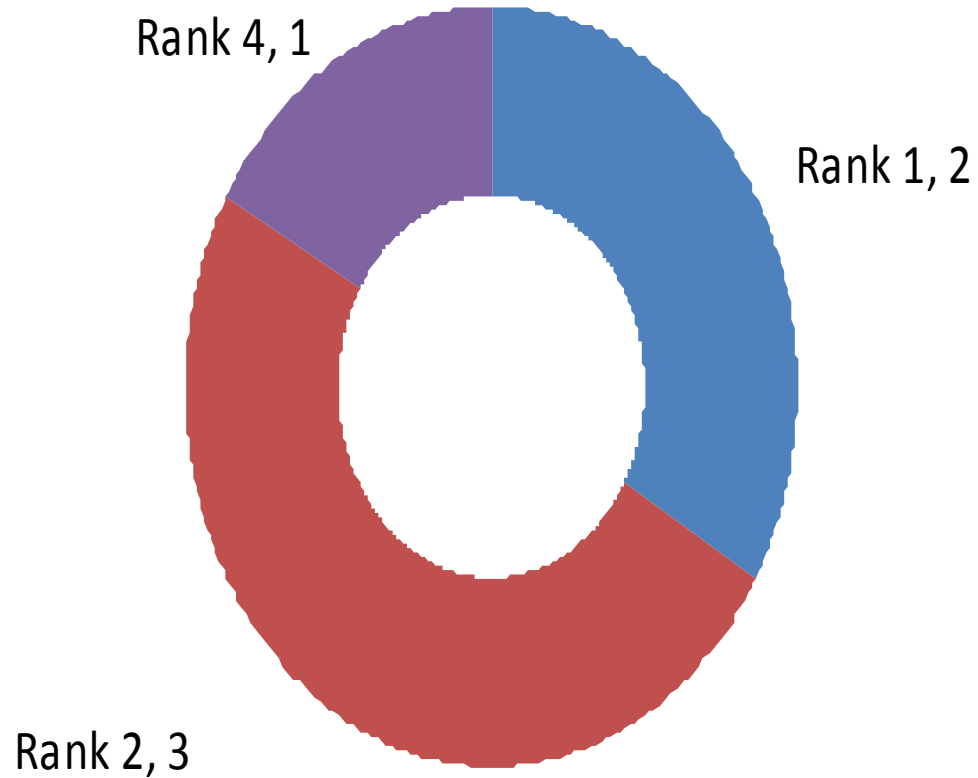


2010 Complaints

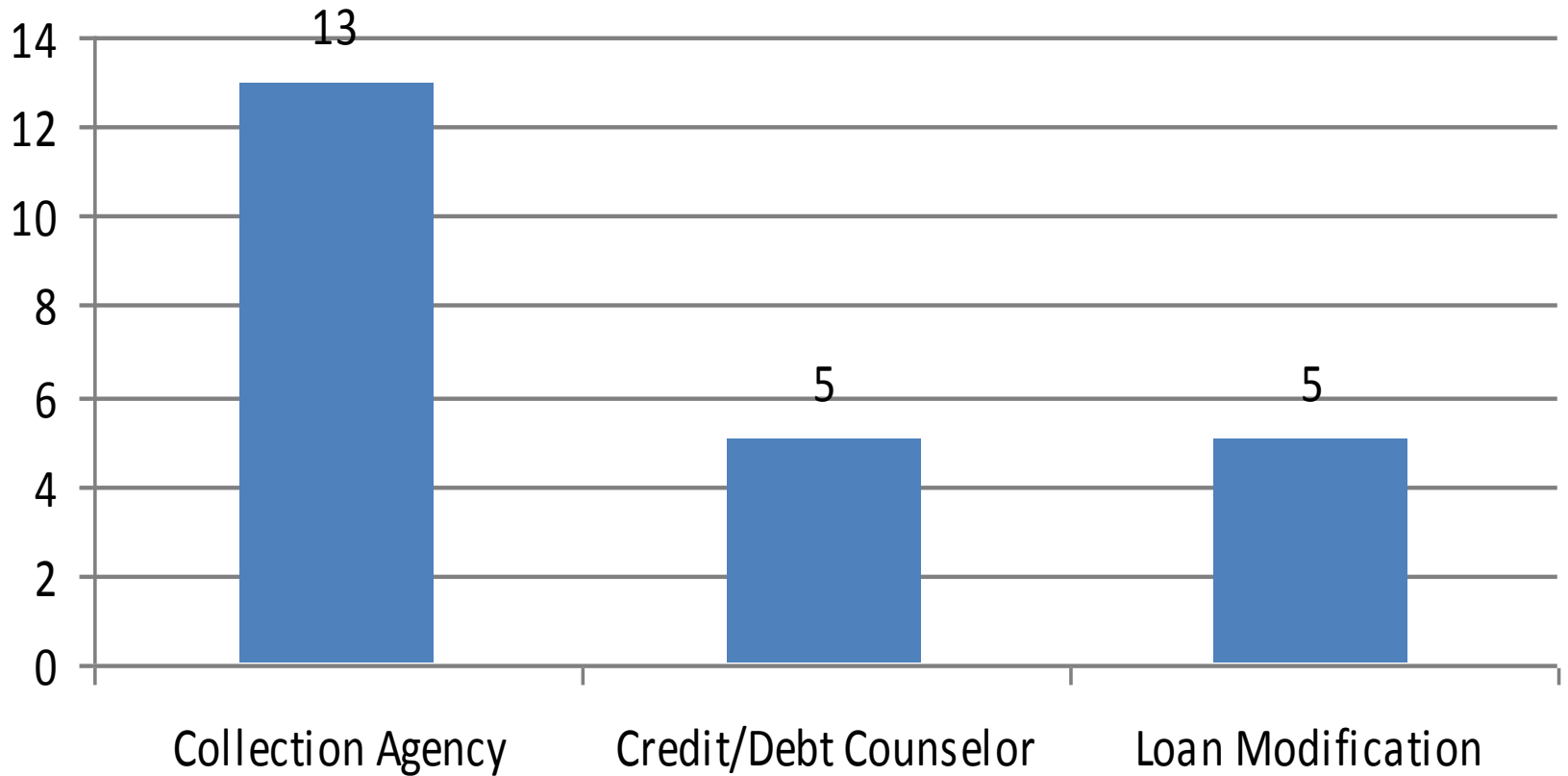


- Total Complaints against Licensed Collection Agencies
- Total Complaints against Licensed Credit/Debt Counselors
- Total Complaints against Unlicensed Collection Agencies
- Total Complaints against Unlicensed Credit/Debt Counselors
- All Other Consumer Complaints

EXAMINATIONS 2010



ENFORCEMENT



U.S BANKRUPTCY-IDAHO
2001-YTD 2006 All Filings by Month
Source: U S Bankruptcy Court



Collection Examination Procedures

Anthony Polidori

Supervising Examiner/Investigator

“In theory there is no difference between theory and practice. In practice there is.”

Yogi Berra

Topics

- Examination Selection
 - Examination Preparation
 - Examination Checklist
 - Pre-Examination Interview
 - Business and Management
 - Compliance Sections
 - Post-Examination Interview
-

Examination Selection

- Selection
 - Random / Routine
 - For-cause

 - Scoping –
 - Limited Scope
 - Full Scope
 - Investigations
-

Examination Preparation

- Notice given –
 - ❑ At least 72 hours prior to a routine examination
 - ❑ No notice on investigations, certain for-cause examinations

 - Compilation of relevant material
 - ❑ Previous Examination Reports
 - ❑ Correspondence since last exam
 - ❑ Complaints
-

Examination Checklist

- Debtor payment receipts or receipt books (12 month period or greater)
- Debtor payment transactions (daily postings) (three month period)
- Creditor/Client Trust statements to correspond w/payments received (three month period)
- Trust bank account statements including reconciliations (12 month period or greater)
- Operating account statements including reconciliations (12 month period or greater)
- Deposit Logs or Deposit Receipt Books

Examination Checklist

- Trust and Operating account check registers (12 month period or greater)
 - A current copy of contracts used between the agency and its clients
 - Copies of all letters and forms used with debtors and with Clients.
 - Policy/procedure manual
 - Current balance sheet
-

Examination Checklist

- Current Qualified Officer and office hours
 - Total number of clients – number of Idaho clients
 - Gross collections and net collections
 - Number of collection lawsuits filed (12 months or greater)
 - Number of collection judgments obtained (12 months or greater)
-

Pre-Examination Interview

- Purpose and scope of examination described
 - Determines key roles
 - Identifies record keeping systems
 - Provides the examiner with information to map examination
-

A Note on Examination Findings and Ranks

- **General Findings** are intended to identify areas where the licensee may wish to improve current practices or where the licensee is commended for current practices which aid in maintaining compliance with the Act and applicable state and federal laws
 - **Regulatory Findings** are intended to identify examples of non-compliance with the Act and applicable state and federal law or where licensee must amend its current practices. References to violations of state law or federal law or regulation are listed with specific citation of the applicable law or regulation
-

A Note on Examination Findings and Ranks

- **Rank 1, No Deficiencies** - No regulatory deficiencies are noted in the examination
 - **Rank 2, Minor Deficiencies** - Regulatory deficiencies noted are isolated and do not represent numerous or substantial violations
 - **Rank 3, Material Deficiencies** - Regulatory deficiencies noted tend to demonstrate a pattern of violations, which without correction, may undermine future compliance
 - **Rank 4, Serious Deficiencies** - Regulatory deficiencies noted represent a pattern of violations, are numerous or intentional, have been cited in previous exams, or may result in harm to consumers or clients
-

Business and Management

- The examiner will evaluate:
 - The licensee's business structure and history
 - Management activities
 - Financial status
 - Policy and procedures
 - Surety bonds
 - Contracts and agreements with third-parties
 - Idaho Code §26-2227 – Licensing compliance
 - Idaho Code §26-2229A – Fair, open and honest dealing, and prohibited practices
 - Idaho Code §26-2234 – Record retention requirements, client remittance, and record keeping
-

Business and Management - Findings

- **General Finding** - The licensee's staff has little industry experience. Although management is generally available for guidance and training, it is recommended that the licensee establish and implement an internal training and education program
 - **Regulatory Finding** - The Act requires that licensees must be open to the public during normal business hours. The licensee has posted its business hours as 8:00am – 5pm, Monday-Friday. On the day of the examination, the licensee was not open at 8:30am. This finding represents a violation of Idaho Code §26-2223A(1)
-

Compliance Review: Communications/Forms

- A review of written and verbal communications will evaluate:
 - The licensee's compliance with the Fair Debt Collection Practices Act
 - The content of the licensee's client agreement
 - The licensee's compliance with the Idaho Code requirement for fair, open and honest dealing
 - Fair Debt Collection Practices Act – §§15 USC 1692 – 1692p
 - Idaho Code §26-2229 – Content of the licensee's client contract
 - Idaho Code §26-2229A - Fair, open and honest dealing, and prohibited practices
-

Communications/Forms - Findings

- **General Finding** - The licensee's client agreement provides that "a small fee" may be charged for handling paperwork on cancelled client accounts. It is suggested that such fees be enumerated in order to avoid client misunderstandings and to ensure compliance with the Act
- **Regulatory Finding** - The licensee's client agreement states that collected funds will be remitted within a 90 day period. The licensee should be aware all collections made by the licensee during the calendar month shall be remitted to its creditors within 30 days of the end of said calendar month. This finding represents a violation of Idaho Code §26-2234(6)

Compliance Review: Payment Receipts and Payment Posting

- The examiner will evaluate:
 - ❑ The nature of the licensee's payment receipt system
 - ❑ Payment receipt preparation
 - ❑ Payment record retention
 - ❑ Timing of payment deposits and posting
 - Idaho Code §§26-2234(1),(4), and (6) – Recordkeeping requirements, and record retention
-

Payment Receipts and Payment Posting - Findings

- **General Finding** - It is recommended that when it is necessary to make material corrections to receipts that the receipt be voided, taking care to retain all copies intact, and a new receipt prepared. In instances when a clarification or an amendment of receipt information is required, it is recommended that additional markings do not obscure the original entries
 - **Regulatory Finding** - Receipt #2010 was written in the amount of \$20.10 but credited to the debtor's account for \$20.00. The client share of this debtor payment was posted on the client daily ledger for this in the amount of \$12.00, while the licensee's share was posted as \$8.00. Although this discrepancy appears to be an isolated error, the \$.10 overpayment represents an unearned credit in the trust account. This finding is a violation of Idaho Code §26-2234(4)
-

Compliance Review:

Trust Accounting

- Utilizing the information accumulated during the compliance review of payment posting, the licensee's client trust account reports, and client trust agreements, the examiner evaluates:
 - The licensee's accuracy in reporting debtor payments to clients
 - The timeliness of client remittances
 - If remittances have been received by clients.
 - Idaho Code §§26-2234(1),(4),(5), and (6) – Recordkeeping requirements, remitting to clients, and record retention
-

Trust Accounting - Findings

- **General Finding** - The licensee does not have a retention process for maintaining client trust statements. The licensee was able to produce requested records, demonstrating that the record retention requirements of the Act were being met. However, in order to help ensure that it continues to meet retention requirements, it is suggested that the licensee establish consistent record maintenance procedures
 - **Regulatory Finding** - Certain debtor payments received prior to the calendar month end were not posted until the following month, and as a result were not remitted to creditors within the time allotted by the Act. The licensee should be aware all collections made during the calendar month are to be remitted to creditors within 30 days of the end of said calendar month. This finding represents a violation of Idaho Code §26-2234(6)
-

Compliance Review:

Trust, General, and Other Accounts

- Utilizing bank account statements and the licensee's accounting records, the Examiner will evaluate:
 - If the licensee has established and maintained a separate trust and a business operating bank account
 - If the bank accounts are maintained in a manner consistent with generally accepted accounting practices
 - If the use of the licensee's trust account is restricted to the deposit and remittance of trust funds
 - Idaho Code §§26-2233(1) and (2) – Establishment and maintenance of bank accounts
 - Idaho Code §§26-2234(1),(2),(4),(5), and (6) –Recordkeeping requirements, remitting to clients, record retention, and accounting practices
-

Trust, General, and Other Accounts - Findings

- **General Finding** – Over time the licensee has established multiple trust accounts at various financial institutions. The licensee has no policy regarding the use of several of these accounts, most of which are apparently never used. It is recommended that the licensee close unused accounts so as to avoid compliance risks
 - **Regulatory Findings** - Review of the licensee's trust account revealed negative balances on May 5 and May 6, 2010. It was determined that the overdraft resulted from the licensee's failure to properly adjust the trust account balance to compensate for electronic processing fees charged to the account. Furthermore, the trust account is not consistently reconciled and had not been reconciled for the most recent month. This finding represents a violation of Idaho Code §26-2234(6)
-

Compliance Review:

Fees and Charges

- The examiner will review select client accounts to determine:
 - If the licensee charges fees and interest in accordance with the Idaho Collection Agency Act
 - If the licensee charges fees and interest in accordance the Idaho Credit Code and other applicable state law
 - Idaho Code §§26-2229(1),(2), and (3) – Provisions of the licensee's agreement with creditor clients
 - Idaho Code §§26-2229A(4) and (8) – The collection of fees and other charges in incidental to the principal obligation
 - Idaho Code §§28-42-308 and 28-22-105 – The collection of dishonored check fees
 - Idaho Code §28-22-104 – Legal rate of interest
 - Idaho Code §§28-43-311 and 28-45-301 – Restrictions on attorney's fees and default charges on regulated credit transactions
-

Fees and Charges - Findings

- **General Finding** - The licensee accepts credit and debit card payments from debtors and charges a fee to the debtor to recovery its costs associated with the payment method, as the Act provides. In order to establish that the fees recovered were directly associated with the licensee's costs, it was necessary for the examiner to reconcile a sampling of such transactions. In an effort to reduce the licensee's examination expense, it is suggested that the licensee maintain an active record of its costs associated with this payment process
 - **Regulatory Finding** - The licensee consistently overcharged interest on post-judgment accounts. Idaho Code provides that interest may accrue on judgments at a rate not greater than the then published legal rate. This finding represents a violation of Idaho Code §28-22-104
-

Compliance Review:

Legal Files

- The examiner will review a select number of legal files to determine:
 - If the licensee maintains documents and information within its legal files to support its claim
 - If full and accurate account transaction records are kept
 - If the licensee adheres to Idaho Credit Code and Idaho Code stipulations with respect to legal action
- Idaho Code §26-2229A(4) – Regarding the nature of, and the manner in which, fees and charges associated with legal actions are imposed and collected.
- Idaho Code §26-2234(4) – The maintenance and retention of records related to legal actions.
- Idaho Credit Code §28-43-311 – Limitations on attorney fees in regulated credit transactions

Legal Files - Findings

- **General Finding** - The licensee maintains complete records in its small claims legal files. Its system of organization was aided the examiner in completing his review of legal files in an efficient and timely manner. The licensee should be commended on its establishment of comprehensive record retention policies and procedures
 - **Regulatory Finding** - The licensee does not maintain a record in its legal files as to how the amount of its claim was established, or a ledger of payments received in garnishment files. This finding represent a violation of Idaho Code §26-2234(4)
-

Post-Examination Interview

- Reiteration of the purpose of the examination
 - Address issues of concern, if any, resulting from the examination
 - Explain the report process and ranking system
 - Respond to licensee questions
 - Comment on positive aspects of the licensee's business
-

Questions

“I never said most of the things I said.”

Yogi Berra
